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Integrated and coordinated implementation of and follow-up to the outcomes of the major United Nations conferences and summits in the economic, social and related fields

Follow-up to the outcome of the Millennium Summit

Security Council
Sixty-sixth year

Letter dated 9 November 2011 from the Permanent Representative of Brazil to the United Nations addressed to the Secretary-General

At the open debate of the Security Council on the protection of civilians in armed conflict, held on 9 November 2011, I had the honour of delivering a statement on behalf of Ambassador Antonio de Aguiar Patriota, Minister of External Relations of Brazil, expressing Brazil's view that the international community, as it exercises its responsibility to protect, must demonstrate a high level of responsibility while protecting. In this regard, I am enclosing a concept note developed by the Government of Brazil on this issue entitled "Responsibility while protecting: elements for the development and promotion of a concept" (see annex).

I should be grateful if you would circulate the text of the present letter and its annex as a document of the General Assembly, under agenda items 14 and 117, and of the Security Council.

(*Signed*) Maria Luiza Ribeiro **Viotti**
Ambassador
Permanent Representative

11-59129 (E) 161111

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Annex to the letter dated 9 November 2011 from the Permanent Representative of Brazil to the United Nations addressed to the Secretary-General

Responsibility while protecting: elements for the development and promotion of a concept

1. Since the adoption of the Charter of the United Nations, in 1945, the thinking on the relationship between the maintenance of international peace and security and the protection of civilians, as well as on corresponding action by the international community, has gone through many stages.

2. In the 1980s, voices emerged in defence of the idea of humanitarian intervention, of a *droit d'ingérence*.

3. On its sixtieth anniversary, the United Nations incorporated the concept of the responsibility to protect in paragraphs 138 and 139 of the 2005 World Summit Outcome (General Assembly resolution 60/1), in terms and using parameters that were the result of long and intense negotiations.

4. The concept of the responsibility to protect is structured in three pillars. The first pillar identifies the State as the primary bearer of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. The second pillar stresses the role of the international community in providing cooperation and assistance to allow States to develop local capacities that will enable them to discharge that responsibility. The third pillar, which applies to exceptional circumstances and when measures provided for in the first and second pillars have manifestly failed, allows for the international community to resort to collective action, in accordance with the norms and procedures established in the Charter.

5. In addition to recognizing that each individual State has the primary responsibility for protecting its own population, the 2005 World Summit Outcome placed limitations on the use of force by the international community in the exercise of its responsibility to protect: (a) material (genocide, war crimes, ethnic cleansing and crimes against humanity); (b) temporal (upon the manifest failure of the individual State to exercise its responsibility to protect and upon the exhaustion of all peaceful means); and (c) formal (through the Security Council, in accordance with Chapters VI and VII of the Charter and on the basis of a case-by-case evaluation).

6. The three pillars must follow a strict line of political subordination and chronological sequencing. In this sequencing, it is essential to distinguish between collective responsibility, which can be fully exercised through non-coercive measures, and collective security. Going beyond the exercise of collective responsibility and resorting to mechanisms in the domain of collective security implies that a specific situation of violence or threat of violence against civilians should be characterized as a threat to international peace and security. Needless to say, it is necessary to clearly differentiate between military and non-military coercion, with a view to avoiding the precipitous use of force.

7. Even when warranted on the grounds of justice, legality and legitimacy, military action results in high human and material costs. That is why it is imperative to always value, pursue and exhaust all diplomatic solutions to any given conflict.

As a measure of last resort by the international community in the exercise of its responsibility to protect, the use of force must then be preceded by a comprehensive and judicious analysis of the possible consequences of military action on a case-by-case basis.

8. Violence against civilian populations must be repudiated wherever it takes place. The 1990s left us with a bitter reminder of the tragic human and political cost of the international community's failure to act in a timely manner to prevent violence on the scale of that observed in Rwanda. There may be situations in which the international community might contemplate military action to prevent humanitarian catastrophes.

9. Yet attention must also be paid to the fact that the world today suffers the painful consequences of interventions that have aggravated existing conflicts, allowed terrorism to penetrate into places where it previously did not exist, given rise to new cycles of violence and increased the vulnerability of civilian populations.

10. There is a growing perception that the concept of the responsibility to protect might be misused for purposes other than protecting civilians, such as regime change. This perception may make it even more difficult to attain the protection objectives pursued by the international community.

11. As it exercises its responsibility to protect, the international community must show a great deal of responsibility while protecting. Both concepts should evolve together, based on an agreed set of fundamental principles, parameters and procedures, such as the following:

(a) Just as in the medical sciences, prevention is always the best policy; it is the emphasis on preventive diplomacy that reduces the risk of armed conflict and the human costs associated with it;

(b) The international community must be rigorous in its efforts to exhaust all peaceful means available in the protection of civilians under threat of violence, in line with the principles and purposes of the Charter and as embodied in the 2005 World Summit Outcome;

(c) The use of force, including in the exercise of the responsibility to protect, must always be authorized by the Security Council, in accordance with Chapter VII of the Charter, or, in exceptional circumstances, by the General Assembly, in line with its resolution 377 (V);

(d) The authorization for the use of force must be limited in its legal, operational and temporal elements and the scope of military action must abide by the letter and the spirit of the mandate conferred by the Security Council or the General Assembly, and be carried out in strict conformity with international law, in particular international humanitarian law and the international law of armed conflict;

(e) The use of force must produce as little violence and instability as possible and under no circumstance can it generate more harm than it was authorized to prevent;

(f) In the event that the use of force is contemplated, action must be judicious, proportionate and limited to the objectives established by the Security Council;

(g) These guidelines must be observed throughout the entire length of the authorization, from the adoption of the resolution to the suspension of the authorization by a new resolution;

(h) Enhanced Security Council procedures are needed to monitor and assess the manner in which resolutions are interpreted and implemented to ensure responsibility while protecting;

(i) The Security Council must ensure the accountability of those to whom authority is granted to resort to force.